

From the INTERNATIONAL BUREAU

**PCT**NOTIFICATION CONCERNING  
TRANSMITTAL OF COPY OF INTERNATIONAL  
PRELIMINARY REPORT ON PATENTABILITY  
(CHAPTER I OF THE PATENT COOPERATION  
TREATY)

(PCT Rule 44bis.1(c))

To:

MORENO, Victor, C.  
Frost Brown Todd LLC  
2200 PNC Center  
201 East Fifth Street  
Cincinnati, OH 45202  
ETATS-UNIS D'AMERIQUEDate of mailing (day/month/year)  
21 September 2006 (21.09.2006)Applicant's or agent's file reference  
0531163**IMPORTANT NOTICE**International application No.  
PCT/US2005/004492International filing date (day/month/year)  
09 February 2005 (09.02.2005)Priority date (day/month/year)  
09 March 2004 (09.03.2004)

Applicant

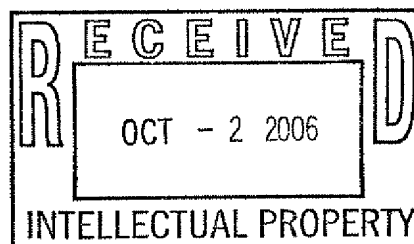
ATRICURE, INC. et al

The International Bureau transmits herewith a copy of the international preliminary report on patentability (Chapter I of the Patent Cooperation Treaty)

DOCKETED-IP

Initials

Date

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10/4/06The International Bureau of WIPO  
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# PATENT COOPERATION TREATY

# PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

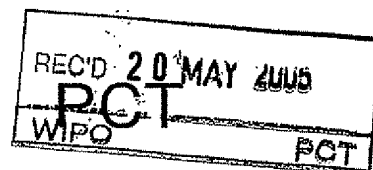
Applicant's or agent's file reference 0531163	<b>FOR FURTHER ACTION</b>	See item 4 below
International application No. PCT/US2005/004492	International filing date ( <i>day/month/year</i> ) 09 February 2005 (09.02.2005)	Priority date ( <i>day/month/year</i> ) 09 March 2004 (09.03.2004)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant ATRICURE, INC.		

1.	This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).																								
2.	This REPORT consists of a total of 8 sheets, including this cover sheet.  In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.																								
3.	<p>This report contains indications relating to the following items:</p> <table style="width: 100%;"> <tr> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 30%;">Box No. I</td> <td style="width: 80%;">Basis of the report</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input checked="" type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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<input type="checkbox"/>	Box No. VIII	Certain observations on the international application																							
4.	The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).																								

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Date of issuance of this report 13 September 2006 (13.09.2006)
Facsimile No. +41 22 338 82 70	Authorized officer  <div style="text-align: center;">Athina Nickitas-Etienne</div> e-mail: pt04@wipo.int

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY



To:

see form PCT/ISA/220

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing  
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference  
see form PCT/ISA/220

**FOR FURTHER ACTION**  
See paragraph 2 below

International application No.  
PCT/US2005/004492

International filing date (day/month/year)  
09.02.2005

Priority date (day/month/year)  
09.03.2004

International Patent Classification (IPC) or both national classification and IPC  
A61B17/00, A61B17/28

Applicant  
ATRICURE, INC.

**1. This opinion contains indications relating to the following items:**

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

**2. FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

**3. For further details, see notes to Form PCT/ISA/220.**

Name and mailing address of the ISA:



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Authorized Officer

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Telephone No. +49 30 25901-582



**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US2005/004492

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**Box No. I Basis of the opinion**

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1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.  
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material:  
☐ a sequence listing  
☐ table(s) related to the sequence listing
  - b. format of material:  
☐ in written format  
☐ in computer readable form
  - c. time of filing/furnishing:  
☐ contained in the international application as filed.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US2005/004492

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**Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

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The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 15-20

because:

☒ the said international application, or the said claims Nos. 15-20 relate to the following subject matter which does not require an international preliminary examination (*specify*):

**see separate sheet**

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for the whole application or for said claims Nos. 15-20

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐ has not been furnished

☐ does not comply with the standard

the computer readable form

☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.

☐ See separate sheet for further details

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US2005/004492

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**Box No. V · Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	1-14,21-24
	No: Claims	
Inventive step (IS)	Yes: Claims	1-14,21-24
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-14,21-24
	No: Claims	

2. Citations and explanations

**see separate sheet**

**Re Item III.**

Claims **15-20** relate to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to novelty, inventive step and industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

**Re Item V**

Reference is made to the following documents:

**D1:** US 5,522,788 A

**1. Independent claim 1**

The document **D1** is regarded as being the closest prior art to the subject-matter of claim **1** and shows (the references in parentheses applying to this document):

A surgical dissector (blunt dissector device 10, see col. 4, line 15, fig. 1), comprising:

- a) an elongate shaft (finger-like dissector portion 16, see col. 4, line 18, fig. 1 and non-flexible end section 16a, see col. 5, lines 22-23, fig. 1,2);
- b) a handle (handle portion 12, see col. 4, line 17, fig.1) connected to shaft;
- c) an articulation joint (hinge arrangement 52, see col. 5, lines 29-30, fig. 1,2,5,6) on the shaft
- d) an arcuate and elongate segment distal the articulation joint (52) and having a blunt distal end (terminating element 16g, see col. 5, lines 24-25, fig. 1);
- e) an actuator (scissor elements 18a and 20a, see col.5, line 59, fig.1) operable to pivot the segment; and
- f) a light source (fiber-optic light element, see col. 6, line 59, fig. 1) emitting visible energy from the distal end of the segment.

The subject-matter of claim **1** differs from this known **D1** in that the surgical dissector comprises an arcuate and elongate segment distal the articulation joint.

The problem to be solved by the present invention may be regarded as how to separate and isolate a first tissue from a second tissue.

The solution to this problem proposed in claim **1** of the present application is considered

as involving an inventive step (Article 33(3) PCT) because the changement of the angular position of the arcuate and elongate segment (30) permits the separation of the first tissue from the second tissue and thus the creation of a path between the tissues.

For similar reasons the subject-matter of claims **21** and **23** also involves an inventive step (Article 33(3) PCT).

## **2. Independent claims 1, 21 and 23**

Although claims **1**, **21** and **23** have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought. The aforementioned claims therefore lack conciseness and as such do not meet the requirements of Article 6 PCT.

## **3. Dependent claims 2-14, 22 and 24**

Claims **2-14** are dependent on claim **1**, claim **22** is dependent on claim **21**, claim **24** is dependent on claim **23** and as such also meet the requirements of the PCT with respect to inventive step (Article 33(3) PCT).

## **4. The following deficiencies were found**

4.1. The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).

4.2. Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the document **D1** is not mentioned in the description, nor is this document identified therein.

4.3. Independent claim **1** is not in the two-part form in accordance with Rule 6.3(b) PCT, which in the present case would be appropriate, with those features known in combination from the prior art being placed in the preamble (Rule 6.3(b)(i) PCT) and with the remaining features being included in the characterising part (Rule 6.3(b)(ii) PCT).

## **5. Remarks**



**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING  
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/US2005/004492

Upon entering the regional phase via the European Patent Office, the requirements of Rule 29(2) EPC should be observed.